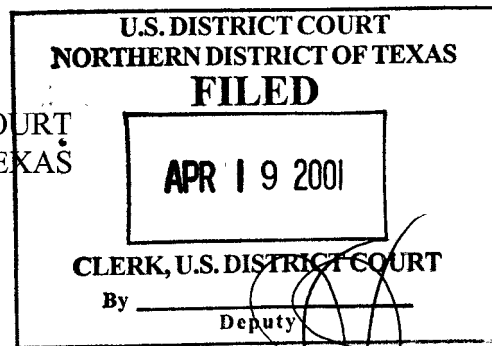


ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



JANET SCOTT,

Plaintiff,

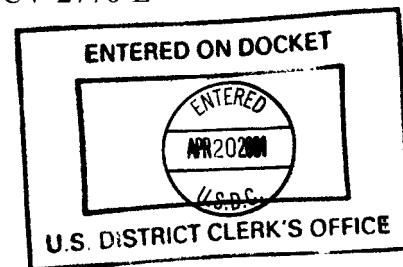
v.

DMN, INC., dba
The Dallas Morning News,

Defendant.

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Civil Action No. 3:99-CV-2776-L



MEMORANDUM OPINION AND ORDER

Before the court is Defendant's Motion for Summary Judgment, filed February 7, 2001. Plaintiff Janet Scott did not file a response to Defendant's summary judgment motion. After careful consideration of the motion, Defendant's brief, applicable authorities, and summary judgment evidence submitted by Defendant, the court, for the reasons stated herein, **grants** Defendant's Motion for Summary Judgment.

I. Procedural and Factual Background.

Plaintiff Janet Scott ("Plaintiff" or "Scott") filed this action against Defendant The Dallas Morning News ("Defendant" or "TDMN") on December 8, 1999. Scott, who was hired by Defendant on October 16, 1997, alleges that Defendant violated Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e *et seq.*, by discriminating against her and discharging her from employment because of her race, African-American, and color.¹ Scott was discharged in early June

¹Defendant states that Plaintiff also asserts a claim for retaliation for her complaining of harassment by her supervisor. Defendant's Brief in Support of its Motion for Summary Judgment at 1, 11, 26-30. The court has carefully read Plaintiff's Original Complaint, the live pleading, and Plaintiff does not allege or plead a claim for retaliation, even under a liberal reading. No where does she allege that she engaged in

1998. Defendant denies that it discriminated against Scott because of her race or color. Defendant also contends that all employment actions that it took against Plaintiff were based on legitimate, nondiscriminatory business reasons. Defendant also contends that Plaintiff suffered no harm because of any of its actions and is therefore not entitled to any monetary or equitable relief.

II. Analysis

Defendant has moved for summary judgment, contending, *inter alia*, that Scott cannot establish or raise a genuine issue of material fact whether it had a legitimate, nondiscriminatory reason for discharging her.² Because TDMN does not have the burden at trial concerning Scott's Title VII claim, it can meet its summary judgment obligation by pointing the court to the absence of evidence to support her claim. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If it does so, Scott must then go beyond her pleadings and designate specific facts showing that there is a genuine issue for trial. *See id.*; *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994)(*en banc*)(*per curiam*). Summary judgment is mandatory when the nonmoving party fails to meet this burden. *Little*, 37 F.3d at 1076.

Scott has not responded to TDMN's motion within the time specified by N.D. Tex. Civ. R. 7.1(e). Defendant filed its summary judgment motion on February 7, 2001. Pursuant to Rule 7.1(e), Scott's response was due February 27, 2001. Her failure to respond does not, of course, permit the court to enter a "default" summary judgment. *Eversley v. MBank Dallas*, 843 F.2d 172, 174 (5th

"protected activity" and that Defendant retaliated against her by terminating her for engaging in such activity. Since she has failed to plead these basic and fundamental facts, no claim of retaliation is before the court. In any event, no competent summary judgment evidence has been submitted to the court regarding retaliation.

²The Dallas Morning News moves for summary judgment on several additional grounds; however, the court finds it unnecessary to address those grounds.

Cir. 1988). The court is permitted, however, to accept TDMN's evidence as undisputed. *Id.*; *Tutton v. Garland Indep. Sch. Dist.*, 733 F.Supp. 1113, 1117 (N.D. Tex. 1990). Moreover, Scott's failure to respond means that she has not designated specific facts showing that there is a genuine issue for trial. "A summary judgment nonmovant who does not respond to the motion is relegated to her unsworn pleadings, which do not constitute summary judgment evidence." *Bookman v. Schubzda*, 945 F. Supp. 999, 1002 (N.D. Tex 1996)(citing *Solo Serve Corp. v. Westowne Assocs.*, 929 F.2d 160, 165 (5th Cir.1991)).

Under the applicable burden-shifting paradigm, Scott was obligated to establish a *prima facie* case of discrimination; TDMN was required to produce evidence of a legitimate, nondiscriminatory reason for discharging Scott; and Scott then became obligated to adduce sufficient evidence to permit a reasonable trier of fact to find pretext or intentional discrimination. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04 (1973); *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 252-53 (1981); *Byers v. Dallas Morning News, Inc.*, 209 F.3d 419, 425-26 (2000). The Dallas Morning News has adduced evidence of a legitimate, nondiscriminatory reason for terminating Scott and has pointed the court to the absence of evidence that it discharged her because of her race or color. See Brief at 16-19 (citing record evidence that Scott was terminated from her employment because she abandoned her job when she repeatedly failed to report to work or to "call in" for over six consecutive weeks in violation of TDMN's attendance policy).³

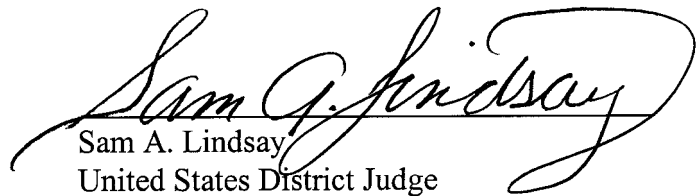
³Under TDMN's attendance policy, an employee could be automatically terminated if he or she missed work for more than three consecutive days or failed to "call in" for more than three consecutive days. Scott was aware of this attendance policy when she was hired by Defendant.

The court finds as a matter of law that job abandonment is a legitimate, nondiscriminatory reason for discharging Scott. Scott has failed to adduce evidence that TDMN's reason for discharging her was a pretext for discrimination. Scott has wholly failed to adduce evidence that would permit a reasonable jury to find that she was the victim of intentional race discrimination.

III. Conclusion

For the reasons stated herein, there is no genuine issue of material fact regarding Plaintiff's claim of discrimination based on race or color. Accordingly, Defendant's Motion for Summary Judgment is **granted**. This action is hereby dismissed with prejudice against Defendant The Dallas Morning News. Judgment will be issued by separate document pursuant to Fed. R. Civ. P. 58.

It is so ordered this 19~~th~~ day of April, 2001.


Sam A. Lindsay
United States District Judge